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Attorneys for *Specially Appearing* Defendant
BUMBO (PTY) LIMITED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DYLAN LAMM, a minor by and
through his guardian ad litem MARY
CATHERINE DOHERTY; and KEVIN
LAMM,

Plaintiffs,

vs.

BUMBO, BUMBO LIMITED, BUMBO
(PTY) LTD.; TARGET
CORPORATION; and DOES 1 to 20,

Defendants.

Case No. C-07-04807 MHP

**DECLARATION OF JENNIFER
J. JOHNSTON IN SUPPORT OF
BUMBO (PTY) LIMITED'S
AMENDED MOTION TO QUASH
SERVICE, DISMISS FOR
IMPROPER SERVICE, LACK OF
PERSONAL JURISDICTION
AND FAILURE TO SERVE, AND
FOR SANCTIONS**

Date: March 10, 2008

Time: 2:00 p.m.

Place: Courtroom of the Hon.
Marilyn Hall Patel

I, Jennifer J. Johnston declare:

1. I am a member of the law firm of Condon & Forsyth LLP, attorneys
of record for defendant Bumbo (Pty) Limited. I have personal knowledge of the
facts stated in this declaration, except for those facts stated upon information and
belief and, as to those factors, I am informed and believe that they are true and
correct. If called as a witness, I could competently testify to these facts. I submit
this declaration in support of Bumbo (Pty) Limited's Amended Motion to Quash

DECLARATION OF JENNIFER J. JOHNSTON IN SUPPORT
OF BUMBO (PTY) LTD.'S AMENDED MOTION TO QUASH
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CASE NO. C-07-04807 MHP

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1 Service, Dismiss for Improper Service, Lack of Personal Jurisdiction and Failure to
 2 Serve, and for Sanctions.

3 2. I am informed and believe that in or around November 2007, Bumbo
 4 (Pty) Limited learned through co-defendant, Target Corporation ("Target"), that
 5 certain lawsuits had been filed against Bumbo (Pty) Limited and Target and that
 6 the lawsuits were pending in the United States District Court for the Northern
 7 District of California.

8 3. I am informed and believe that Bumbo (Pty) Limited has no
 9 information that it has ever been served in any lawsuit pending in the United States
 10 District Court for the Northern District of California. Bumbo (Pty) Limited
 11 learned through Target that plaintiffs' attorneys in the lawsuits claimed to have
 12 served "Bumbo."

13 4. Bumbo (Pty) Limited initially retained the law firm of Condon and
 14 Forsyth LLP ("C&F") to monitor the docket and ensure that default would not be
 15 taken.

16 5. Bumbo (Pty) Limited also requested C&F to contact plaintiffs'
 17 attorneys and request information about the purported service.

18 6. I instructed my office to check the court dockets, and we located two
 19 lawsuits. These lawsuits were *Lamm v. Bumbo*, Case No. C-07-04807 and *Whitson*
 20 *v. Bumbo*, Case No. C-07-05597. Attorneys of record for the plaintiffs in both the
 21 *Lamm* and *Whitson* actions are the Edgar Law Firm.

22 7. On November 15, 2007, I sent a letter to plaintiffs' attorneys
 23 requesting information regarding service of the summons and complaint in the
 24 *Lamm* action. I further requested plaintiffs' attorneys to advise C&F before a
 25 default was requested. A true and correct copy of this letter is attached hereto as
 26 Exhibit "A."

8. I received a letter from plaintiffs' attorneys, dated November 21, 2007. They refused to provide me with any information regarding service or to "enter into any agreements" with C&F regarding the decision to seek default. A true and correct copy of this letter is attached hereto as Exhibit "B."

9. I then sent another letter to plaintiffs' attorneys on November 21, 2007, advising them that C&F had no record of any service made on Bumbo (Pty) Limited and further requesting them to "refrain from any attempts to take a default judgment against Bumbo." No response was received. A true and correct copy of this letter is attached hereto and Exhibit "C."

10. After learning that a default based upon a defective affidavit had been entered against Bumbo (Pty) Limited in the *Whitson* matter, C&F filed a motion to set aside the default, quash service, dismiss for insufficiency of service of process and lack of personal jurisdiction and for sanctions due to plaintiffs' vexatious and unreasonable conduct. This motion was filed on December 28, 2007, and is set for hearing on February 21, 2008.

11. Subsequently, I learned that plaintiffs filed an affidavit of service in the *Lamm* action on January 7, 2008, claiming that they effected service on "Bumbo Limited" by serving "Mark Buchanan" as "owner" in Conroe, Texas. I attempted to obtain information about the purported service and learned that the summons and complaint were delivered to Wartburg Enterprises, Inc., a Texas distributor of the "Baby Sitter."

12. I am informed and believe that the address where the summons and complaint were purportedly served in the *Lamm* action belongs to a facility operated by Wartburg Enterprises, Inc. Wartburg Enterprises, Inc. acts as a distributor for the "Baby Sitter" but is a separate company incorporated in Florida and not an agent for service of process for Bumbo (Pty) Limited. A true and

1 correct copy of Wartburg Enterprises, Inc.'s Articles of Incorporation is attached
2 hereto as Exhibit "D."

3 13. After learning of the defective affidavit filed in the *Lamm* action, I
4 sent yet another letter to plaintiffs' attorneys advising, again, that neither Wartburg
5 Enterprises, Inc. nor Mark Buchanan was authorized to accept service of process
6 on behalf of Bumbo (Pty) Limited and requesting that they immediately withdraw
7 their affidavit. Again, C&F received no response to this letter. A true and correct
8 copy of this letter is attached hereto as Exhibit "E."

9 14. At the date of this motion, I have still not received any
10 communication from plaintiffs' attorneys regarding any service issue, other than
11 the above-referenced letter of November 21, 2007.

12 15. I have spent two hours of time attempting to quash service and
13 dismiss due to inadequate service in this action. This includes my time in
14 preparation of the declarations, review of the amended motion and memorandum
15 of points and authorities in support thereof, communications with my client, and
16 communications with plaintiffs' attorneys. My hourly rate is \$375.

17 16. Most of the preparation of the amended motion and memorandum of
18 points and authorities was completed by Lisa M. Pierce. Ms. Pierce spent ten
19 hours on the preparation of this amended motion. Ms. Pierce's hourly rate is \$185.

20 17. Jessica Viker is a paralegal at C&F. Ms. Viker has spent two hours in
21 monitoring the court's docket daily as well as in communications with
22 plaintiffs' attorneys. Ms. Viker's hourly rate is \$110.

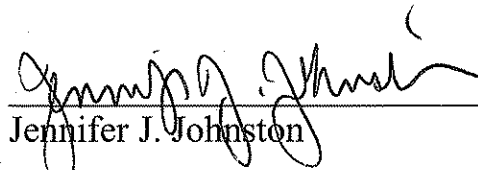
23 18. The total fees expended thus far in C&F's attempt to quash service
24 and dismiss due to inadequate service are \$2,820. Bumbo (Pty) Limited is
25 requesting this amount in sanctions against plaintiffs and their attorneys.

26 19. I anticipate that additional time will be spent in responding to
27

1 opposition papers, preparing for the hearing in this matter and traveling to the
2 hearing. C&F reserves the right to submit further declarations concerning
3 additional expenses incurred.

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed this 28th day of January 2008 at Los Angeles, California.

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8 Jennifer J. Johnston
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